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1951

Sept. 11

[illegible], Director,
Division of Insurance and Property
[illegible], New Hampshire

Dear Mr. Gurney:

You have inquired how essential operational supplies such as letterheads, general forms, etc. are to be provided in view of the terms of House Bills 146 and 447, which read as follows:

> "S. Printing. No funds of the state of New Hampshire whether appropriated hereunder or otherwise available, shall be expended for printing, publication or binding of any matter not expressly authorized to be printed, published or bound, by existing statutes; and no such expressly authorized printing, publication or binding shall be contracted for except upon express approval as to format, artistic layout, and cost, by the governor and council, or by a person or persons appointed by the governor and council for that purpose."

In construing statutes, the question is what the words used meant to those using them and the circumstances under which the language was used, the available purpose, the general policy on the subject, prior legislation, the entire legislation at the time, and the reasonableness of one construction or the other; these are all matters proper for consideration. [illegible], 77 N.H. 222, 90 Atl. 613 (1914). We must assume that the Legislature intended "achieved an effective governmental result". Sutherland, Statutory Construction, s. 4810. The circumstances under which the law in question was enacted were widely discussed in the public press. According to such reports, the legislators had before them a printed pamphlet copiously illustrated and published by one of the state departments at an estimated expense of $1.20 per copy. It was said that the printing had taken place and the expense had been incurred without the knowledge of the Governor and Council. The legislation was designed to prevent this type of expenditure.

C O P Y

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If we consider contemporary legislation, we [illegible] that in [illegible] Bill [illegible] the amendments contained in the House Journal of [illegible], 19[illegible] at page [illegible] indicate that the Legislature, in using the [illegible] referred only to the conventional or traditional method of [illegible]; that is to say, the word was given its common usage. [illegible], c. [illegible] If they had intended to include other methods of publi- [illegible] they would have said "printing or such other form of reproduction" as [illegible] in the above-cited amendment. Further evidence to support this point of view is noted in the fact that Mr. [illegible] from your office discussed with the Senate committee at the time that section 5 was adopted, [illegible] currently used in the purchasing manual which establishes [illegible] printing and binding. The manual definition includes "printing, [illegible], engraving, lithographing" etc. This definition was [illegible] because it was too broad, particularly in regard to mimeographing. [illegible] the category established in the purchasing manual as Symbol 0260, [illegible] printed forms, unstamped envelopes, letterheads, etc., being [illegible] that the printing and binding category, was not intended to come under the words "printing, publication or binding" as used in section 5.

The foregoing definition is given with the [illegible] that it is not possible to anticipate in advance every [illegible]. The facts of each case must be considered and I wish [illegible] the services of this office to be of whatever assistance is possible [illegible] to determine what may be printing, publication or binding. The [illegible] for this reservation is demonstrated by the history of the legislation itself. The Senate was obviously under the impression that the [illegible] to which I have referred in my second paragraph was [illegible] conventional printing. Further inquiry at this time indicates [illegible] reproduced by the photo-lithography method. In other [illegible], while the word "printing" should be narrowly construed, there are bound [illegible] from time to time certain exceptions where as a matter of judgment [illegible] the approval of the Governor and Council or their agent should be obtained. We have already examined the voluminous printed forms used in the administration of the motor vehicle laws and with a very few [illegible] have indicated that they did not fall within the intended prohibition of section 5, principally for the reason that they were forms used in the regular operation of that department.

A question has been raised as to whether or not the provisions relative to binding apply to the routine binding of [illegible] in our State Library. It is quite obvious in considering the circumstances of the adoption of section 5 that such binding was never intended to [illegible] within its provisions.

In applying the statute as construed above, no printing, publication or binding is permitted unless it is expressly authorized by statute. That is to say, the language of the statute must specifically direct or permit such printing, publication or binding or the authorization must be inherent in the expressed statute. Thus, there

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[illegible] question with regard to the printing of the biennial reports [illegible] of the various departments of the state by special statutes, pro- [illegible] to the required approval of the Governor and Council or [illegible] designated agents. Similarly, a department charged with the enforce- [illegible] of the law, upon demonstrating that printing is unavoidably necessary [illegible] for enforcement, may be permitted to order such printing after [illegible] the required approval. Any more restricted construction of the [illegible] "specifically authorized" would lead to unreasonable conclusions. Thus, [illegible] instances laws might well remain on the books but would be im- [illegible] to enforce.

It is my conclusion that sections 5 of House [illegible] and 6167 were intended to limit conventional printing, publica- [illegible] or binding (usually of an extensive nature) analogous to the pamphlet [illegible] which I have referred in my second paragraph; that the phrase "specifically [illegible]" must be construed to include printing which is demonstrably [illegible] to the administration of laws; that in any instance where such [illegible] is requested, it must be approved by the Governor and Council or [illegible] authorized agent(s); and that the burden of proving that any item [illegible] is generally authorized or is unavoidably necessary to the ad- [illegible] of the law is upon the department requesting it.

I might add that if the Governor and Council [illegible] to select you or your office as their agents in the purchase of print- [illegible], such an appointment would be wholly consistent with the terms of the [illegible] Act of 1929. The additional appointment of one of their own [illegible] to serve with you in matters of this nature would of course be in [illegible] and within the intention of the legislative language.

Very truly yours,

Conlon M. Tiffany
Attorney General

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